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1-1 Personal Conduct**1-1.1 Code of Ethics**

Real Estate Services (RES) staff shall at all times conduct themselves in an ethical manner (RCW 42.52 Ethics in Public Service).

1-1.2 Political Activity

The political activities of state employees are directly controlled by various statutes which describe both permitted and prohibited activities.

1-1.2.1 Hatch Act

- A. Federal law (the Hatch Act) applies to officers and employees of state and local agencies when such agencies receive federal funds. Washington State Department of Transportation (WSDOT) officers and employees are, therefore, subject to the provisions of the Hatch Act.
- B. The Office of the General Counsel, U.S. Civil Service Commission, states that effective January 1, 1975, state and local employees may not:
 - 1. Use their official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office.
 - 2. Directly or indirectly coerce, attempt to coerce, command or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes.
 - 3. Be a candidate for public or political party elective office in a partisan primary, general, or special election.

1-1.3 Sales to Employees Prohibited

No WSDOT employee is permitted to purchase either at public auction or otherwise any state-owned real property, improvements, or personalty which are under the jurisdiction of WSDOT, except in unusual cases with the specific prior approval of the Secretary of Transportation. Contact Property Management in the Headquarters for additional information.

1-1.4 Rendering Emergency Assistance

- A. The department encourages its employees to provide emergency assistance to the public if and when the situation arises. Such assistance includes:
 - 1. Aiding stranded motorists.
 - 2. If qualified in First Aid, rendering such assistance at the scene of an accident.
 - 3. Assisting in directing traffic at the scene of an accident under the direction of or until relieved by the Washington State Patrol or other local police officer.
 - 4. Transporting injured persons from the scene of an accident to a hospital or doctor's office.

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- B. Any person who in good faith and without compensation renders emergency care at the scene of an emergency or who transports therefrom any injured persons for medical treatment is immune from civil damages arising out of said actions. However, the person rendering such aid or transportation is liable if their actions or omissions constitute gross negligence or willful or wanton misconduct.

1-2 Personnel Selection

1-2.1 Washington State Civil Service System

All RES personnel are covered by the Washington State Civil Service System which affords them protection similar to that provided by the Federal Civil Service System.

1-2.2 Classification Titles

Job descriptions for the following classification titles are given in the Washington State Department of Personnel Classifications and Washington Management Service (WMS) position descriptions.

- Right of Way Agent I
- Right of Way Agent II
- Right of Way Agent III
- Right of Way Agent IV
- Region Real Estate Services Manager — WMS
- Assistant Region Real Estate Services Manager — WMS
- Assistant Director — WMS
- Deputy Director — WMS
- Director — WMS

1-2.3 Function Titles

The function title describes a particular specialty within a classification title. For example: a person holding the classification title of Right of Way Agent might be assigned any of the following function titles:

- Staff Appraiser
- Acquisition Agent
- Title Examiner
- Condemnation Examiner
- Property Management Agent
- Relocation Agent

1-2.4 Selection and Assignment

Rules and procedures for the selection and assignment of personnel to classification titles are given in the Merit System Rules.

1-3 Training Program

RES employees are encouraged to attend and participate in local chapter meetings of professional societies in their respective fields. Membership in such societies is purely voluntary the department neither requires such memberships as a condition of employment nor contributes to the cost of such memberships.

Employees may be afforded training opportunities to maintain a level of proficiency suitable to the needs of the department. The department is not obligated to offer training and does not require it as a condition of, or for continuation of employment.

The department will offer training opportunities which are potentially capable of increasing employee efficiency, improving job performance, and contributing to the promotional advancement of the participants.

1-4 Travel

Rules and procedures governing travel on state business are given in the *WSDOT Accounting Manual* (M 13-82) and the Local 17 Bargaining Agreement.

1-5 Vehicle Operation

Rules and procedures governing the use of state automobiles are given in the references cited in manual 53-50, *Use of State Provided Motor Vehicles*.

1-6 Daily Entry Diaries

1-6.1 General

The maintenance of Daily Entry Diaries by RES personnel assigned to field duties provide a running record of their activities and all persons and locations involved in their respective departmental business contacts.

1-6.2 Rules

- A. All RES personnel assigned to field duties maintain Daily Entry Diaries.
- B. At the end of each calendar year, Daily Entry Diaries are submitted to the Region Real Estate Services Manager (RESM).
- C. Daily Entry Diaries are retained in Region files for a period of seven (7) years.

1-6.3 Procedures

- A. The RESM:
 - 1. Periodically audits the Daily Entry Diaries as necessary to assure diary integrity.
 - 2. Assures that the Daily Entry Diaries are retained in the Region files for a period of seven (7) years following the year of their preparation.
- B. All RES personnel assigned to field duties:
 - 1. Make daily entries covering:
 - a. Project title and parcel numbers worked on each day.
 - b. Account to which time is charged; e.g., CS _____, Job number _____ (R/W #, OL #, etc.).
 - c. A brief statement describing tasks performed, persons contacted, location of activities, etc.

Note: Unusual occurrences or developments are of outstanding importance.
 - 2. Submit the Daily Entry Diary to the RESM:
 - a. Upon the request of the RESM.
 - b. At the close of the calendar year.
 - c. Upon termination of assignment to direct field duties.
 - d. Transfer out of the Region.
 - e. Retirement or other termination.

1-7 Highway Location and Design

1-7.1 General

- A. Interdisciplinary teams are employed in all stages of transportation planning, location, and design. Both Headquarters and Region RES personnel are called upon for their professional expertise.
- B. The Region RESM (or designee) makes project field inspections at appropriate times throughout the development of a project to assure that adequate consideration is given to significant Right of Way elements involved in the location and design of the project, including possible social, economic, and environmental effects.
- C. RES personnel may contribute to the transportation planning team effort in various areas of which the following are examples:
 - 1. Provide and evaluate ownership information.
 - 2. Identify the extent of the impacted area.
 - 3. Estimate costs of acquisition, relocation assistance, and other costs of proposed plans.
 - 4. Identify and evaluate potentials for airspace development.
 - 5. Identify and evaluate opportunities for multiple use of roadway properties, i.e., accommodation of transportation needs, and nontransportation uses/services through joint development of transportation and utility corridors.
 - 6. Identify historical sites, open space and park lands, recreation areas, and wildlife and waterfowl refuges.
 - 7. Identify the need for local roadway facilities; e.g., frontage service roads.
 - 8. Identify needs for, and feasibility of, functional replacement of publicly-owned real property.
 - 9. Identify and evaluate social, economic, and aesthetic impacts of the proposed project upon adjacent property, the community, and upon the region, including, but not limited to:
 - a. Impact of the proposed project on urban planning, and existing and future land use development trends.
 - b. Impact of the proposed project on community affairs (e.g., effects upon school attendance areas, accessibility of community shopping facilities to residential areas, etc.).
 - 10. Identify displacements of people, businesses, farms, and nonprofit organizations, availability of satisfactory replacements and last resort housing needs; evaluate related costs.
- D. The Region Administrator (or designee) conducts both the location (corridor) public hearing and the design public hearing.

1-7.2 Cost Estimates

- A. Upon the request of the Region Administrator (or designee):
 - 1. The Region RESM assigns Staff Appraisers to prepare appropriate cost estimates as specified in Chapter 4 of this manual.
 - 2. Relocation Agents are assigned to prepare appropriate Relocation Plans and relocation cost estimates as specified in Chapter 12 of this manual.
 - 3. Upon request, an engineer will accompany the Staff Appraiser and/or the Relocation Assistance Agent on the field inspection to advise on the design and the location details being studied.
- B. The Region RESM (or designee) maintains file copies of all reports. An additional copy is maintained by the Region Administrator, (or designee) on all studies submitted by the Region. Such copies are retained for three (3) years from the date of the final voucher for the project.

1-8 Right of Way Plans

- A. Right of Way Plans are prepared by the Engineering Staff of the appropriate Region. These plans include the operating right of way, land service facilities (e.g., rest areas, frontage service roads, etc.), and acquisition data. If the acquisition is for a limited vertical dimension or is for multiple or joint use, an appropriate explanatory note may be included on the plan.
- B. The Region RESM:
 - 1. Assures that Right of Way data of the types listed in this chapter are made available to the Engineering Staff.
 - 2. Assists the Region Administrator (or designee) in identifying and assigning Right of Way parcel numbers to the affected ownerships shown on the Right of Way Plans.
 - 3. Determines the types and extent of the property and/or property rights required (e.g., fee, easement, permit, etc.).
 - 4. Assures that Right of Way Plans are complete to the extent that the necessary data are depicted thereon.

1-9 FHWA Regulations, Compliance With

1-9.1 Right of Way Projects

Unless specifically noted (e.g., “On nonfederal-aid projects . . .”), all operating regulations and procedures in this manual are intended to comply with applicable federal regulations.

1-10 Authority to Enter Lands for Surveys, Appraisals, etc.

“The commission or its duly authorized and acting assistants, agents, or appointees shall have the right to enter upon any land, real estate, or premises in this state, whether public or private, for purposes of making examinations, locations, surveys, and appraisals for highway purposes. The making of such entry for said purposes shall not constitute any trespass by the commission or by its duly authorized and acting assistants, agents, or appointees.” (RCW 47.01.170)

Department personnel normally obtain the consent of the property owner or tenant before entering private lands. Personnel may enter without such consent only on authority of the Director of Real Estate Services.

1-11 Actions Against State Employees

A. Civil Suits

1. Private parties may bring suits against employees of the state. The statutes of the state protect its employees in the following circumstances:

If an action or proceeding for damages is brought against any Department employee based on the employee's acts or omissions while performing, or in good faith purporting to perform, their official duties, the employee may request that the defense of said action or proceeding be conducted by and at the expense of the State. The employee submits a written request to his immediate supervisor detailing the facts in the case and agreeing to cooperate in the defense. The supervisor submits the request through channels as appropriate. The request is then referred to the Attorney General's Office. Upon concurrence, an Assistant AG is assigned to appear and defend the employee at the State's expense. In this situation, if a judgment is rendered against the employee, the State's Tort Claims Revolving Fund will pay any part of the judgment which is not covered by any valid and collectible liability insurance held by the employee or the state.

The employee is liable if the employee's actions or omissions constitute gross negligence or willful misconduct.

2. While our employees are covered by the blanket state vehicle liability policy while operating state equipment, this policy does not offer protection when state vehicle operation is not involved.

B. Administrative Actions by the Department

1. When a department employee is involved in an accident which results in injury involving an Industrial Insurance claim, bodily injury, or property damage to a member of the general public, or damage to the state's vehicles, machinery, equipment, or property, such an accident is made the subject of consideration by the Accident Review Board.
2. An employee who is determined by the Accident Review Board to have acted improperly or negligently may be subject to disciplinary action and/or a requirement to reimburse the state in the amount of damages to the state-owned property.

1-12 Personal Services Contracting by WSDOT Real Estate Services

1-12.1 General

The WSDOT Real Estate Services Office occasionally requires the services of outside consultants to accomplish tasks where state staff has insufficient expertise or availability, and where the task duration does not justify enlarging WSDOT staff. In such instances, personal service contracts are let by WSDOT Real Estate Services.

The types of services contracted for are: real estate acquisition (eminent domain) appraisal and appraisal review services; cost-to-cure/specialist estimates used in the eminent domain appraisal process; and real property acquisition services. Where practical, lists of pre-approved/pre-qualified consultants are used as sources of competitors. It is the intent of WSDOT Real Estate Services to provide the opportunity for minority firms and women's business enterprises to obtain an equitable share of the work for which consultants are engaged within the projected scope of work, their respective capabilities, and availability. WSDOT Real Estate Services complies with its FHWA approved affirmative action plan for federally funded projects.

This section outlines the procedures and policies for procuring and administering personal services contracts by the WSDOT Real Estate Services Office per RCW 39.29 and RCW 39.80.020. These procedures do not apply to contracts between WSDOT and other public agencies or to contracts between the Attorney General's Office and private consultants.

Procedures for procuring and awarding contracts vary depending on the type of consultant and whether the contract is exempt from competition, required to be competitively solicited, for emergency services, sole source, or is an amendment to an existing contract. The procedures for each are separately outlined in the Office of Financial Management publication entitled "Guide to Personal Service Contracting."

1-12.2 Appraisal and Appraisal Review Services

This subsection covers contracting procedures for eminent domain real estate appraisal, review appraisal, and funding estimate type services. Because these services are so unique, it is practical to maintain one pre-approved/pre-qualified list of consultants.

A. Procurement Source — WSDOT Fee Appraiser and Review Appraiser List

This List is maintained by Real Estate Services, Assistant Director, Appraisal and Appraisal Review Program, as a source of qualified competitors for these services. The list is established and maintained as follows:

1. WSDOT solicits interest from potential appraisal consultants once per year during the month of September.
 - a. A solicitation is advertised in a major newspaper.
 - b. A mailing, seeking interest, is sent to all persons holding an appraisal license or certification issued by the State of Washington, Department of Licensing.
 - c. A 30-day period is allowed for appraisers and review appraisers who are interested to respond. During this period, there can be dialogue between the applicants and WSDOT.
2. Applications from interested appraiser consultants are reviewed by the Assistant Director, Appraisal and Appraisal Review Program, for credentials, expertise, experience, training, and availability:
 - a. As a minimum, the appraiser must have some experience and/or training in eminent domain appraisal/partial acquisitions. Appraisers not meeting the minimum requirements will be notified in writing.
 - b. WSDOT conducts an examination of qualified appraisal applicants. Those who pass the examination by a raw score of 65 percent or over are included on a list of qualified eminent domain appraisers. Applicants with at least two years of full-time experience as a staff Appraiser or Review Appraiser for WSDOT are exempt from taking the examination.
 - c. Those applicants who do not pass the examination will be notified in writing. If so desired, the appraiser may appeal to the Director Real Estate Services. The appeal must be in writing and received within 30 days of notification of examination results.
 - d. WSDOT will notify those passing the exam of their inclusion on the list.
3. Applications from interested review appraiser consultants are reviewed by the Assistant Director, Appraisal and Appraisal Review Program, for credentials, expertise, experience, training, and availability:

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- a. Each qualified applicant is required be certified “General” in the state of Washington per RCW 18.140 and be on the WSDOT approved appraiser list. A mailing, seeking interest, is sent to each appraiser on the WSDOT approved list.
 - b. The minimum amount of appraisal experience required is five years of full-time narrative real estate appraisal report writing within the past ten years, two years of which were eminent domain appraisals in the state of Washington. Or, two full years as a full-time Review Appraiser with WSDOT.
 - c. WSDOT conducts an examination of qualified review appraiser applicants. Those who pass the examination by a raw score of 65 percent or over are included on a list of qualified eminent domain review appraisers. Applicants with at least two years of full-time experience as a staff review appraiser for WSDOT are exempt from taking the examination.
 - d. Those applicants who do not pass the examination will be notified in writing. If so desired, the appraiser may appeal to the Director Real Estate Services. The appeal must be in writing and received within 30 days of notification of examination results.
 - e. WSDOT will notify those passing the exam of their inclusion on the list.
5. The Assistant Director, Appraisal and Appraisal Review Program, keeps a performance file for each consultant on the list. A consultant may be removed from the list for cause:
 - a. Falsification of information on the list application.
 - b. Violation of the Fee Reviewer’s List Application Affidavit.
 - c. Felony conviction.
 - d. Malfeasance or misfeasance.
 6. WSDOT makes copies of the list available to the WSDOT Regions, Attorney General Office, and other public agencies requesting a copy.
- B. “Exempt from Competition” contracts:
- Are contracts under \$5,000 where the contractor has done less than \$5,000 sole source contract work for WSDOT in the current fiscal year (including the proposed contract amount). This information is available from the Assistant Director, Appraisal and Appraisal Review Program. These contracts can be immediately awarded without competitive solicitation. The procedures for these contracts are:
1. The Region Appraisal Supervisor awards the contract to a consultant on the WSDOT Fee Appraiser and Review Appraiser List.
 2. The Region Appraisal Supervisor drafts the approved Personal Services Contract:
 - a. Item 1-16 are boiler plate language approved by the AG's office.
 - b. Item 17 shall include all required items plus a funding number with sufficient funds to pay the contract.
 - c. Item 18 is the definition of the task or the scope of services to be rendered. The final sentence in this section is to read: “Appraisal services contracted herein are to meet the standards of the *WSDOT Appraisal Guide* (Appendix 4-1, M 26-01).”
 - d. Item 19 is a lump sum total in words and figures. If the task is a multi-parcel contract, the total amount is broken down per parcel on an attachment or in Item 25.

- e. Item 25 is the area for definitions of fee breakdowns, special payment or completion timetables, overruns, promptness bonuses, lateness penalties, etc.
 - f. The contractor's IRS number must appear next to the contractor's telephone number.
 - g. The contract "Y" number is written at the bottom right. This number is assigned by Headquarters Work Order Accounting.
- 3. The contract is executed by the contractor.
 - 4. Contracts up to \$4,999 may be executed by ADAARP (Assistant Director, Appraisal and Appraisal Review Program) for WSDOT. The date of WSDOT execution is the contract "start work date."
 - 5. The contract package is transmitted to the Assistant Director, Appraisal and Appraisal Review Program:
 - a. The cover is a memorandum explaining:
 - (1) that the needed service is critical to WSDOT operations;
 - (2) that sufficient, qualified staff is not available within WSDOT to perform the service in the required time frame;
 - (3) that other qualified public staff are not available to perform the needed service within the required time frame; and
 - (4) that the contract amount is reasonable for the needed services.
 - b. The completed Agreement Edit Information sheet (DOT Form 130-005).
 - c. The contract original.
 - 6. The Assistant Director, Appraisal and Appraisal Review Program, reviews the package for completeness, forwards the contract to Agreement Review, maintains contract records.
 - 7. The Region Appraisal Supervisor monitors the contract task completion, provides liaison between the contractor and the department, and handles payment per terms of the contract
- C. Contracts Required to be Competitively Solicited:
- Are those where the proposed contract amount is \$5,000 or over, or where the proposed contractor has done a cumulative of \$5,000, or over, sole source work for the department during the current fiscal year (including the proposed contract amount). The procedures for these are:
- 1. The Region Appraisal Supervisor obtains three or more fee proposals by letters of solicitation written to consultants on the WSDOT Fee Appraiser and Review Appraiser List. These requests for proposals (RFPs) contain as a minimum:
 - a. A description of the type of services required;
 - b. The proposed schedule that the services are to meet;
 - c. A request that the consultant provide cost or fee estimates for the services to be performed (these are to be broken down per-parcel if applicable);

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- d. A due date and location for delivery of the response to the solicitation;
 - e. A statement that the criteria for award will be based on:
 - (1) credentials, experience, reputation
 - (2) the proposed fee or cost
 - (3) ability to meet schedules
 - (4) previous performance
 - (5) responsiveness to the solicitation
 - f. Nondiscrimination statements per RCW 39.19.080 and RCW 39.19.090.
2. The Region Appraisal Supervisor awards the contract to the best competitive proposal.
 3. The Region Appraisal Supervisor drafts and has the contractor sign the contract.
 4. The contract package is transmitted to the Assistant Director, Appraisal and Appraisal Review Program:
 - a. The cover is a memorandum explaining:
 - (1) that the needed service is critical to WSDOT operations;
 - (2) that sufficient, qualified staff is not available within WSDOT to perform the service in the required time frame;
 - (3) that other qualified public staff are not available to perform the needed service within the required time frame;
 - (4) a summary of the solicitations made, the bids received, and the reasons for award; and
 - (5) if the contract is for \$20,000 or more, a statement that advertising requirements are exempted per OFM letter dated 8-14-92.
 - b. The completed Agreement Edit Information sheet (DOT Form 130-005);
 - c. The contract original; and
 - d. A copy of each solicitation and response letter.
 5. Real Estate Services, Assistant Director, Appraisal and Appraisal Review Program, reviews the package for completeness, forwards the contract for execution by the Director, Real Estate Services, forwards the contract original to Agreement Review, sends an executed copy to the Region, and maintains contract records.
 6. Real Estate Services, Assistant Director, Appraisal and Appraisal Review Program, informs the Region Appraisal Supervisor of the start date of the contract. The Region Appraisal Supervisor sends a letter to the contractor informing them of the start date.
 7. The Region Appraisal Supervisor monitors the contract task completion, provides liaison between the contractor and the department, and handles payment per terms of the contract.

1-13 Vacate**1-14 Relocation Review Board**

Reviews and takes action on appeals by relocation displacees who are aggrieved as to eligibility for, or the amount of any relocation assistance payment. See Chapter 12 of this manual and consists of:

1. The Regional Administrator from the affected Region
2. The Director for Environmental and Engineering Programs
3. Director, Real Estate Services

1-15 Right of Way Certification**1-15.1 State Projects****1-15.1.1 General**

Right of Way is certified clear by the Region with a “Right of Way Certificate” prior to advertising the physical construction of the project. Where Federal Highway funds are anticipated the project is recertified by Headquarters to the FHWA. Projects funded in whole or in part by the FHWA can not proceed to contract until notification of approval is received from the FHWA.

1-15.1.2 Procedures

- A. Region and Headquarters Right of Way coordinate to obtain clearance of the right of way. The computer system is kept updated by the appropriate Region and Headquarters staff.
- B. Upon receipt of a copy of the PS&E the Assistant Director, Local Agency Projects/Special Acquisitions/Certifications, reviews the status of right of way required for the project.
- C. The procedures and guidelines in this manual are adhered to. Any deviations are documented and authorized on a case by case basis.
- D. For projects where the Final Project Definition indicates that no right of way needs to be acquired no certificate is required. If project scope changes occur after submittal of the Final Project Definition and additional right of way is required, a certificate is submitted following standard procedures.
- E. At least two weeks prior to advertising a project the Region submits a Right of Way Certificate to Headquarters using one of the following formats. In the case of projects funded by FHWA, Headquarters then prepares a certificate using the same format and submits it to FHWA at least one week prior to advertising.
 1. **All Right of Way Acquired.** Legal and physical possession has been obtained but trial or appeal of cases may be pending. All occupants have vacated the right of way and the agency has the right to remove any remaining improvements
 2. **Right to Occupy All Right of Way Acquired.** Trial or appeal of some parcels may be pending and some parcels may have right of entry or possession and use only. All occupants have vacated the right of way and the agency has the right to remove any remaining improvements

3. **All Right of Way Not Acquired.** This certification is to be used only in very unusual circumstances.

Acquisition of a few remaining parcels is not complete. All occupants of residences have had replacement housing made available to them in accordance with 49 CFR 24.204. The agency must adequately explain why construction of the project before acquisition is complete, is in the public good. The agency will ensure that occupants of residences, businesses, farms or nonprofit organizations who have not yet moved from the right of way are protected against unnecessary inconvenience or coercive action. All unacquired parcels will be identified and a realistic date given for completion of acquisition and relocation. An explanation of why the properties are not acquired and how they will be acquired by the given date is also required. Appropriate notification will be provided in the bid proposals identifying all locations where acquisition is not complete.

- F. Certifications with exception must be followed by a certification without exception when possession of all parcels is obtained.

1-15.2 Local Agency Projects

1-15.2.1 General

Federally funded project activities of a local agency, such as a county, city or town, are monitored for FHWA by the Highways and Local Programs Division with Real Estate Services monitoring the acquisition and certification of right of way. To qualify to acquire right of way, an agency must submit and have approved right of way procedures and follow the procedures and guidelines in this manual and in Chapter 25 of the *Local Agency Guidelines* manual.

1-15.2.2 Procedures

- A. The Region RES Manager through the Region Local Agency Coordinator (Coordinator) coordinates with the Region Local Programs Engineer the handling of right of way matters on federally funded Local Agency projects.
- B. The coordinator works closely with the local agencies from the outset of the project to insure that all right of way is acquired according to the guidelines. The extent of the involvement is determined by the expertise of the agency staff. The Coordinator will perform a review of the project files prior to submitting a certification through Local Programs to Real Estate Services in Headquarters.
- C. The Assistant Director, Local Agency Projects/Special Acquisitions/Certifications, keeps files on each agency to include their Approved Procedures, Agreements for Aid and Project Certifications. Upon receipt of the local agency certificate, prepares a certificate to the FHWA as set forth in Chapter 25 of the *Local Agency Guidelines* manual and submits it to Highways and Local Programs.
- D. Highways and Local Programs combines the certificate with the funding package and transmits to FHWA for approval. Upon receipt of approval, Highways and Local Programs will notify the local agency that the project can be advertised.